FCC 95-159

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 2 and 90 of the	)	PR Docket No. 89-553
Commission's Rules to Provide for the	)	
Use of 200 Channels Outside the	)	
Designated Filing Areas in the	)	
896-901 MHz and the 935-940 MHz Bands	)	
Allotted to the Specialized Mobile Radio Pool	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
	)	
Implementation of Sections 3(n) and 322	)	
of the Communications Act	)	GN Docket No. 93-252

SECOND REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: April 14, 1995 Released: April 17, 1995

Comment Date: May 24, 1995
Reply Comment Date: June 1, 1995

By the Commission: Commissioner Barrett concurring and issuing a statement.

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I. INTRODUCTION

1. In this *Second Report and Order and Second Further Notice of Proposed Rulemaking,* we adopt final service rules, and request comment on auction rules that will enable us to complete the licensing of the 900 MHz Specialized Mobile Radio (SMR) service. The *Further Notice* requests comment on further aspects of the Commission's decision in the *Third Report and Order* inGN Docket No. 93-252[1] (*CMRS Third Report & Order*), to license the 900 MHz band on an MTA basis, and to use competitive bidding to select from among mutually exclusive applicants. We establish technical and operational rules for the new MTA licensees, and also define the rights of incumbent SMR licensees already operating in the 900 MHz band. We set forth proposals for new licensing rules and auction procedures for the service, including provisions for designated entities. These proposed rules will serve our twin goals of providing service to the public expeditiously, and allowing the marketplace to respond to consumer demands. The rules adopted and policies set forth and proposed herein will promote competition, while allowing incumbents to continue to pursue their business plans. Finally, we address issues raised on reconsideration of the *CMRS Third Report &*

[1] Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988 (1994) (*CMRS Third Report & Order).*

Order pertaining specifically to the 900 MHz SMR service.[2]

II. EXECUTIVE SUMMARY

2. The following paragraphs summarize the principal decisions made in this Order regarding service rules, and the proposals in the Further Notice concerning auction rules.

A. Second Report and Order: Service Rules

3. As decided in the *CMRS Third Report & Order*, the 900 MHz SMR band will be divided into 20 ten-channel blocks in each of 51 service areas based on Major Trading Areas (MTAs), which match the blocks previously licensed for the Designated Filing Areas ("DFAs"). Each MTA license will give the licensee the right to operate throughout the MTA on the designated channels except where a co-channel incumbent licensee already is operating. MTA licensees also will be allowed to aggregate multiple blocks within an MTA and to aggregate blocks geographically in multiple MTAs.

4. MTA licensees in this service will be required to meet coverage requirements in their service areas. Specifically, we require coverage of 1/3 of the population in the service area within three years of the initial license grant and 2/3 of the population within five years. Alternatively, a licensee may make a showing at five years that it is providing "substantial service." In evaluating such showings, the Commission may consider such factors as whether the licensee offers a service that covers multiple MTAs or is offering an otherwise specialized or technologically sophisticated service that does not require ubiquitous coverage to be of benefit to customers. MTA licensees must satisfy these requirements regardless of the area or percentage of the MTA population that is served by incumbent licensees. As we have provided in the broadband PCS service, licensees may resell spectrum within their service area, provided that use of the spectrum remains subject to the licensee's ultimate control. We believe that allowing such resale will encourage provision of service to small markets and rural areas, which will help licensees to fulfill coverage requirements, and will promote the most efficient use of the spectrum.

5. In order to ensure that incumbent licensees receive protection from interference by MTA licensees, the Order provides that MTA licensees either must maintain a minimum 113 kilometer (70 mile) geographic separation or comply with our short-spacing rules with respect to all incumbent facilities in their service area or in adjacent MTAs. We also give incumbents the flexibility to modify or add facilities within their existing service areas so long as they do not expand coverage beyond their existing 40 dBu signal strength contour.

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[2] Petitions for Reconsideration of the *CMRS Third Report & Order* that raise general CMRS issues, or specific issues pertaining to other CMRS services, will be addressed in a separate Order.

6. With respect to co-channel interference between adjacent MTA licensees, MTA licensees will not be permitted to exceed a signal level of 40 dBuV/m at their service area boundaries, and we will require coordination of frequency usage between co-channel adjacent MTA licensees and incumbents. Also, we will apply emission mask rules (rules that restrict transmitter emissions on the spectrum adjacent to the licensee's adjacent channel) to the "outer" MTA channels in each block (*i.e.*, the channels on the outer edges of the MTA licensee's channel block) and to any "interior" MTA channels that are adjacent to those used by incumbent licensees (*i.e.*, the channels inside of the MTA licensee's channel block assignment that are adjacent to other licensees).

7. We partially reconsider our decision in the *CMRS Third Report & Order* to grant primary site protection only to 900 MHz secondary site authorizations that were granted on or before August 9, 1994. In this Order, we also extend primary site protection to secondary sites for which applications were filed on or before August 9, 1994 but which were granted after that date. We deny reconsideration, however, of our decision in the *CMRS Third Report & Order* with respect to loading requirements in the 900 MHz service. Consequently, incumbent 900 MHz SMR licensees will continue to be subject to our prior loading requirements, although they are eliminated for MTA licensees.

8. Although some 900 MHz channels are not available in Mexican and Canadian border areas, we will use the same channel block allocation for MTA licensees in these areas as in other parts of the country. Licensees whose MTAs include border areas may use only the channels in their block only to the extent that such channels are available to United States licensees pursuant to international agreement.

9. We also modify our rule regarding discontinuance of operation to conform with the standard in § 22.317, which allows a licensee to discontinue operations for 90 continuous days with notification to the Commission.

B. Second Further Notice of Proposed Rulemaking

1. Auction Rules

10. A total of 1,020 MTA licenses (51 MTAs times 20 licenses in each MTA) will be awarded in the 900 MHz SMR service. In this Further Notice, we tentatively conclude that we will use a single simultaneous multiple round auction to award these licenses, because the licenses are interdependent, and licensees likely will aggregate and/or substitute across spectrum blocks and geographic areas. We reserve the discretion, however, to hold more than one auction, and to issue a public notice to notify applicants, if we determine that a single auction is administratively unworkable. Both incumbents and new entrants would be eligible to bid for all MTA licenses without restriction. All applicants for MTA licenses would be treated as initial applicants for public notice, application processing, and auction purposes. The Wireless Telecommunications Bureau would announce the time and place of the auction and provide additional information to bidders by future public notice.

11. As proposed, applicants would apply for the 900 MHz SMR auction by filing a short-form application (FCC Form 175) and paying an upfront payment. We propose adoption of the standard upfront payment formula of $0.02 per pop-MHz, based on the number of 10-channel blocks in each MTA identified on the applicant's Form 175 and the total MTA population regardless of incumbent coverage. We also propose adoption of the Milgrom-Wilson activity rule used in previous multiple-round simultaneous auctions, which requires bidders to declare their maximum eligibility in terms of MHz-pops and limits them to bidding on licenses encompassing no more than the MHz-pops covered by their upfront payment.

12. As proposed, each applicant would be required to specify on its Form 175 its classification, status as a designated entity (if applicable), markets and frequency blocks applied for, and persons authorized to place or withdraw bids. Applicants would have to identify any arrangements or agreements with other parties relating to the licenses that are being auctioned, and certify that there are no arrangements other than those specified. Applicants would be able to correct minor defects in their short-form applications prior to the auction, but could not make any major modifications to their applications, including market changes, cognizable ownership changes or changes in the identification of parties to bidding consortia, until after the auction. However, applicants could modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. In instances where only a single applicant has applied for a particular MTA channel block, the Commission would cancel the auction for that block and establish a deadline for filing of the applicant's long-form application. In all instances where mutually exclusive applications are filed, the MTA channel block would be included in the auction.

13. As proposed, the timing and duration of auction rounds would be determined by the Wireless Telecommunications Bureau and announced by public notice. As in prior auctions, we expect to start the auction with relatively large bid increments and reduce increments as bidding activity falls. We also propose adoption of a simultaneous stopping rule for this auction to afford bidders flexibility to pursue back-up strategies to ensure that bidders will not hold back bids until the final round. During the auction, we retain the discretion to declare that the auction will end after a specified number of additional rounds.

14. We also propose to specify bid increments, *i.e.*, the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment helps to ensure that the auction closes within a reasonable period of time and is expressed in both a percentage and fixed dollar amount. Under this proposal, we may impose a minimum bid

increment of five percent or $0.02 per pop-MHz, whichever is greater,[3] but we also retain the discretion to set, and by announcement before or during the auction, vary the minimum bid increments for licenses over the course of an auction.

15. We propose adoption of the bid withdrawal and default rules for this auction similar to those used in prior auctions. Under these rules, any bidder that withdraws a high bid during an auction before the Commission declares bidding closed must reimburse the Commission for the difference between the amount of the ultimate winning bid and the withdrawn bid if the winning bid is lower than the withdrawn bid. An auction winner defaulting after the close of the auction would also have to pay the lesser of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid. In the event that an auction winner defaults, is disqualified, or if the license is revoked or terminated, the Commission would re-auction the license, except that the Commission may offer the license to the second highest bidder if the default occurs within five days after the auction closes.

16. At the conclusion of the auction, winning bidders would be required to supplement their upfront payments and file their long-form applications (FCC Form 600). The upfront payment would have to be supplemented in an amount sufficient to bring the winning bidder's deposit up to 20 percent of its winning bid within five days after the close of the auction. Designated entities eligible for installment payments, however, would have to bring their deposits up to five percent of the winning bid within five days after the close of the auction. Once each applicant has filed its long form and submitted its down payment, the Wireless Bureau would issue a public notice announcing the application's acceptance for filing and opening a 30-day window for filing of petitions to deny.

17. As we propose, the 900 MHz SMR auction would be subject to the same regulatory safeguards as prior auctions to prevent applicants from colluding during the auction or obtaining unjust enrichment from subsequent transfer of the license. To prevent collusion, bidders who have applied for licenses in the same geographic area on their short forms may not cooperate, collaborate, discuss, or disclose the substance of their bids or strategies with other bidders during the auction except pursuant to a consortium or arrangement identified in the short-form application. Bidders would also have to attach an exhibit to the Form 600 explaining the terms, conditions, and parties involved in any bidding arrangement. With respect to transfers, licensees transferring their licenses within three years of the initial license grant would have to disclose to the Commission all contracts and other documentation associated with the transfer.

2. Designated Entities

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[3] *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532 (1994) at ¶ 44 (*Auctions Fifth Report & Order*).

18. Because of the large number of available licenses and the presence of incumbents throughout the 900 MHz SMR band, we state our tentative conclusion not to create an entrepreneurs' block in this service. However, we request comment on whether the capital requirements of the service may be so substantial that we should insulate certain blocks from large bidders to provide opportunities for designated entities.

19. Nevertheless, we propose to adopt several provisions for bidding in the 900 MHz auction by designated entities. Under our tentative conclusion, small businesses, including small businesses owned by women and minorities, would be eligible for a ten percent bidding credit on any MTA license. Under this proposal, small businesses would be allowed to make a reduced down payment (five percent of the winning bid following the close of the auction, with the balance of the down payment to be paid five days after the license grant), and would also be entitled to pay the bid balance in installments over the remaining license term.

20. We believe that broadening the scope of opportunities for very small businesses has the potential to result in substantial participation by women and minorities, and we believe that the expected capital outlay for the 900 MHz service will not present the same type of obstacles for those entities as a more costly spectrum-based service like PCS. However, we request comment on the projected costs associated with acquisition, construction and operation of 900 MHz MTA licenses, and the extent of participation of women-owned and minority-owned entities in the current 900 MHz SMR service. We also request comment on whether we should adopt separate provisions for women-owned and minority-owned entities.

21. We tentatively conclude that reduced upfront payments for designated entities are unnecessary in the 900 MHz service, but request comment on that tentative conclusion. Finally, we propose adoption of partitioning rules for rural telephone companies similar to those that we have applied to broadband PCS.

22. For purposes of determining eligibility for the small business provisions we propose for the 900 MHz SMR service, we propose to define a small business as an entity that, together with affiliates, has average gross revenues for the three preceding years of less than $3 million. We also propose to use the 25 percent attribution threshold and affiliation rules applicable to PCS. For purposes of determining eligibility for minority-owned and women-owned entities, if we adopt separate provisions for such entities, we propose to use the definition contained in Section 1.2110(b)(2) of the Commission's rules.

23. We tentatively conclude that designated entities entitled to special provisions in the 900 MHz SMR service will be subject to restrictions on transfer or assignment of their licenses. During the first three years of the license term, those entities may not transfer or assign their licenses to anyone, and transfers will be limited to other designated entities during the fourth and fifth year. If the assignee is not eligible for the same provisions, the small business would reimburse the government for the amount of the bidding credit before transfer of the license would be permitted.

III. BACKGROUND

24. The 900 MHz SMR service was established in 1986, when the Commission allocated 200 channel pairs in the 896-901 MHz and 935-940 MHz bands for SMRs in order to alleviate congestion in the 800 MHz SMR band.[4] To expedite service in major markets where demand for SMR service was greatest, the Commission elected to use a two-phase licensing process. In Phase I, licenses were assigned in 46 "Designated Filing Areas" (DFAs) comprised of the top 50 markets. Following Phase I, the Commission envisioned licensing facilities in areas outside these markets in Phase II. In the meantime, however, licensing outside the DFAs was frozen after 1986, when the Commission opened its filing window for the DFAs.[5]

25. In 1989, the Commission adopted a *Notice of Proposed Rule Making* in PR Docket 89-553,[6] proposing to begin Phase II licensing of SMR facilities nationwide. The *NPRM* contained proposals intended to add flexibility to SMR systems. The Commission continued its freeze on licensing outside the DFAs while the rulemaking was pending, but some DFA licensees elected to become licensed for secondary sites (*i.e.*, facilities that may not cause interference to primary licensees and must accept interference from primary licensees) outside their DFAs to accommodate system expansion.

26. In 1993, the Commission adopted a *First Report & Order and Further Notice of Proposed Rulemaking* in PR Docket 89-553,[7] modifying its Phase II proposal and seeking

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[4] Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, GEN Docket No. 84-1231, Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations To Allocate Frequencies in the 900 MHz Reserve Band for Private Land Mobile Use, GEN Docket No. 84-1233, Amendment of Parts 2, 22, and 25 of the Commission's Rules To Allocate Spectrum for, and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, GEN Docket No. 84-1234, *Report and Order*, 2 FCC Rcd 1825 (1986) (*900 MHz SMR Report & Order*).

[5] Public Notice, Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands, rel. Nov. 4, 1986, 1 FCC Rcd 543 (1986) (Public Notice of Nov. 4, 1986).

[6] Amendment of Parts 2 and 90 of the Commission's rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Notice of Proposed Rulemaking*, PR Docket No. 89-553, 4 FCC Rcd 8673 (1989).

[7] Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *First Report and Order and Further Notice of*

comment on whether to license the 900 MHz SMR band to a combination of nationwide, regional, and local systems. Shortly after the *First Report &Order/Further Notice*, Congress amended the Communications Act to reclassify most SMR licensees as Commercial Mobile Radio Service (CMRS) providers and establish the authority to use competitive bidding to select from among mutually exclusive applicants for certain licensed services.[8] Accordingly, the Commission deferred further consideration of Phase II and incorporated the 900 MHz docket (as well as the companion docket relating to 800 MHz SMR)[9], into its *CMRS* proceeding to ensure that the regulation of all SMRs would be consistent with the regulation of competing CMRS services such as cellular and PCS[10] and to consider the impact of auction authority on the record of the pending 900 MHz proceeding.[11]

27. In the *CMRS Third Report & Order*, the Commission further revised its Phase II proposals and established the broad outlines for the completion of licensing in the 900 MHz SMR band. The Commission concluded that (1) the 900 MHz SMR band would be licensed in 20 ten-channel blocks using MTAs as service areas; (2) licensing of mutually exclusive applicants for this spectrum would be based on competitive bidding; (3) incumbent licensees in the band would retain the right to operate under their existing authorizations, but would be required to obtain the relevant MTA license (or obtain the consent of the MTA licensee) to be able to expand their systems.[12] The Commission noted that some licensees had been granted authorizations to construct facilities outside of the DFAs, so they could link facilities in

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Proposed Rulemaking, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) (*Phase II First Report & Order & Further Notice*).

[8] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (Budget Act), § 6002(b), 107 Stat. 312, 392 (1993) (to be codified at 47 U.S.C. § 332).

[9] Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rulemaking,* PR Docket No. 83-144, FCC 94-271, rel. Nov. 4, 1994, 59 Fed. Reg. 60,111 (Nov. 22, 1994)(*800 MHz Further Notice*).

[10] *See* Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report & Order*); *CMRS Third Report &Order*, 9 FCC Rcd 7988 (1994).

[11] Due to the passage of the Budget Act, the issues raised in the 1993 *Phase II First Report & Order*, (*e.g.*, primary status of secondary sites; license terms, eligibility for nationwide or regional licenses; limitation on number of licenses controlled by single licensee), were addressed in the *CMRS Third Report & Order.*

[12] *CMRS Third Report & Order* at ¶ 119.

different markets. With respect to those unprotected sites (*i.e.*, "secondary sites"),[13] the Commission stated that those that were licensed on or before August 9, 1994, would be entitled to primary site protection.[14] The Commission also eliminated loading requirements for future MTA licensees, but retained them for incumbent 900 MHz SMR licensees that do not obtain MTA licenses.[15]

28. While the *CMRS Third Report & Order* established the framework for 900 MHz licensing, the Commission left the adoption of specific auction and service rules for the Phase II *Order*. Various parties filed for reconsideration of the *CMRS Third Report and Order* and made *ex parte* presentations concerning, *inter alia*, secondary sites, loading requirements, treatment of incumbents *vis a vis* the MTA licensees, coverage requirements, and auction designs. Those petitions relating specifically to the 900 MHz SMR service will be considered here.

IV. SECOND REPORT AND ORDER

A. SERVICE RULES

1. Overview

29. Unlike the 800 MHz SMR band, the 900 MHz SMR band is lightly occupied, due to the fact that we have licensed the twenty 10-channel 900 MHz spectrum blocks only within the immediate vicinity of the top 50 markets in the country. We allocated 200 channel pairs (12.5 kHz per channel) in the 900 MHz band for the SMR service in 1986 and established a two-phase process for licensing these channels.[16] Phase I licensing began in 1987 and was completed in 1992 within the 46 "Designated Filing Areas'' (DFAs) representing the top 50 markets in the nation. Twenty licenses were authorized within each DFA. Currently, all 20 channel blocks are licensed for the 900 MHz SMR service in only nine of the top markets.[17] Furthermore, since these initial licenses were awarded in 1987, we have cancelled a significant percentage of licenses for failure to timely construct and place their systems in operation, additionally increasing the availability of channel blocks in the 900 MHz SMR

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[13] *See* 47 C.F.R. § 90.7 (defining "secondary operation").

[14] *CMRS Third Report & Order* at ¶ 119.

[15] *Id.* at ¶ 194.

[16] *See 900 MHz SMR Report & Order*, 2 FCC Rcd 1825 (1986).

[17] The nine DFA markets in which all channel blocks are currently licensed are: New York, Los Angeles, San Francisco, Houston, Dallas/Fort Worth, Miami, Boston, San Diego, and Washington, D.C./Baltimore. Substantial numbers of channel blocks are available in several of the top 50 markets, including Chicago, Philadelphia, and Detroit.

service.

30. Based on our view of actual and potential competition in the CMRS market, we determined in the *CMRS Third Report & Order* that our channel assignment and service area rules for 900 MHz SMR service, like those for 800 MHz, would be comparable to those of cellular and PCS to the extent practical. Although only 5 MHz of spectrum is available in the 900 MHz band, we stated our belief that this service presents significant opportunities for the development of certain types of wide-area mobile voice and data services that could compete with these other services.[18] In addition, the limited amount of prior licensing at 900 MHz makes implementation of wide-area licensing throughout pre-defined geographic areas considerably simpler than at 800 MHz, where extensive licensing has already occurred.

a. Service Areas

31. In the *CMRS Third Report & Order*, we decided to use MTAs as the service area for future 900 MHz SMR licensing. We concluded that the limited success of existing 900 MHz systems confined to providing service in DFAs argued against the use of more numerous BTAs or similarly small service areas, which are not substantially larger (and are in some cases smaller) than DFAs in most major markets. We found that MTA licensing was more likely to create opportunities for both existing licensees and new entrants to meet customer demands for wide-area service. We also concluded that using MTAs was preferable to using larger regional service areas or licensing on a nationwide basis, because use of these larger service areas could restrict unnecessarily entry into the 900 MHz market to a very small number of licensees. We found that use of MTAs for licensing of 900 MHz services would promote greater opportunities for entry without foreclosing the possibility of geographic consolidation, subject to Commission review and approval.[19]

32. We note that Rand McNally & Company is the copyright owner of the MTA Listings, which list the counties contained in each MTA, as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's *Commercial Atlas & Marketing Guide* (the "MTA Map.")[20] At the time of the *CMRS Third Report & Order*, Rand McNally had licensed the use of its copyrighted MTA/BTA Listings and maps for certain services such as PCS and 800 MHz SMR, but had not concluded such an agreement for 900 MHz SMR users.[21] On reconsideration of the *CMRS Third Report and Order*, Rand McNally requested that the Commission refrain from adopting the use of MTAs as the geographic boundaries for the 900 MHz SMR service, as it

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[18] *CMRS Third Report & Order* at ¶ 113.

[19] *Id. at* ¶¶ 114-115.

[20] *CMRS Third Report & Order* at n.218.

[21] *Id.* at nn.197, 218.

had not licensed its MTA Listings in connection with that service.[22]

33. Since that time, however, an agreement in principle for a blanket copyright license has been reached between Rand McNally and the American Mobile Telecommunications Association ("AMTA").[23] This license agreement would authorize the conditional use of Rand McNally's copyrighted material in connection with the 900 MHz SMR service. This agreement would require interested persons using the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership. Grantees of 900 MHz SMR ten-channel block MTA licenses would obtain a license to use Rand McNally's copyrighted material pursuant to the Rand McNally/AMTA license agreement upon payment to Rand McNally of $125.00 per each ten-channel block MTA license a grantee obtains.

34. The MTA Listings, the MTA Map and the draft Rand McNally/AMTA license agreement are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 628, 1919 M Street N.W. Washington D.C. 20554. Copies of the foregoing also can be obtained by contacting Kim McLean, Marketing Coordinator, Rand McNally & Company, 8255 North Central Park, Skokie, Illinois 60076 (telephone: (800) 333-0134) or the American Mobile Telecommunications Association, 1150 18th Street N.W., Suite 250 Washington D.C. 20036 (telephone: (202) 331-7773).

35. We have been informed by the parties that grantees who do not wish to take part in the Rand McNally/AMTA license agreement are free to negotiate their own licensing arrangement with Rand McNally. In any event, it is important to emphasize that a 900 MHz SMR MTA license grantee who does not obtain a copyright license (either through the Rand McNally/AMTA license agreement or some other arrangement with Rand McNally) from Rand McNally for use of the copyrighted material may not rely on grant of an MTA-based SMR license from the Commission as a defense to any claim of copyright infringement brought by Rand McNally against such grantee. In view of the foregoing, we fully expect that Rand McNally and AMTA will finalize their license agreement and, accordingly, we deny Rand McNally's petition for reconsideration.

b. Channel Blocks

36. The 900 MHz SMR band is comprised of 20 blocks of 10 contiguous channels each, interleaved with channels assigned to other Part 90 services. In the *CMRS Third Report & Order*, we concluded that in light of the flexibility conferred by our ability to use auctions, each 10-channel block would be separately licensed and that applicants would be permitted to

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[22] Rand McNally & Company Petition for Reconsideration, filed Oct. 24, 1994.

[23] *See* Letter to William F. Caton, Acting Secretary, FCC, from Daniel S. Goldberg, Esq., Jan. 19, 1995.

aggregate blocks.[24] We also concluded that we would not restrict eligibility for any channel block, and that it would be appropriate to allow both incumbents and new entrants to bid without restriction for one or more 900 MHz blocks.[25] Eligibility is limited only by the overall 45 MHz aggregate CMRS spectrum cap, as discussed at ¶¶ 66-68, *infra*.[26]

37. Consistent with the flexibility granted to cellular and PCS licensees, MTA licensees on 900 MHz channels will be authorized to construct stations anywhere in their MTAs on unoccupied channels that are available for construction.[27] The MTA license will allow a licensee to expand or modify facilities throughout its service area without prior Commission approval, so long as the system continues to be in compliance with our technical and operational rules and protects incumbents, but the licensee will be required to notify the Commission of such changes.

2. Coverage Requirements

38. In the *CMRS Third Report & Order*, we concluded that 900 MHz MTA licensees should be subject to construction requirements similar to those established for other wide-area CMRS licensees such as cellular and broadband PCS.[28] Specifically, we provided 900 MHz MTA licensees five years to construct and operate their systems. We also concluded in the *CMRS Third Report & Order* that 900 MHz wide-area SMR licensees should be subject to interim coverage requirements that are similar to those in the cellular and PCS rules.[29] We deferred establishing specific coverage requirements for these systems, however, until the completion of this 900 MHz Phase II proceeding.

39. RAM and Geotek have proposed that 900 MHz MTA licensees provide coverage to one-fourth of the population of their service area within three years of initial license grant and to one-third of the population of their service area within five years.[30] They argue for a less stringent coverage requirement than that proposed for the 800 MHz service on the

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[24] *CMRS Third Report & Order* at ¶ 116.

[25] *Id.*

[26] *See id.* at ¶ 263.

[27] *Id.* at ¶ 117.

[28] *Id.* at ¶ 182.

[29] *Id.*

[30] RAM/Geotek Joint *Ex Parte* Presentation, filed Feb. 6, 1995, at 2.

grounds that there has not been as much buildout in the 900 MHz service[31] and because current applications of 900 MHz SMR are primarily specialized services for businesses that do not require ubiquitous coverage.[32]

40. We will require 900 MHz MTA licensees to provide coverage to one-third of the population of their service area within three years of initial license grant and to two-thirds of the population of their service area within five years. Alternatively, at the five year mark, MTA licensees may submit a showing to the Commission demonstrating that they are providing substantial service. This requirement fits squarely between our 10 MHz broadband PCS rules, which require coverage to one-fourth of the population of the licensee's service area within five years, or alternatively, to submit a showing to the Commission that a licensee is providing substantial service,[33] and our narrowband PCS rules, which require coverage of one-fourth of the population within five years, and three-fourths of the population within 10 years.[34] We will also follow the model in broadband PCS, by allowing licensees to resell spectrum within their service area, provided that use of the spectrum remains subject to the licensee's ultimate control. We believe that allowing such resale will encourage provision of service to small markets and rural areas, which will help licensees to fulfill coverage requirements, and will promote the most efficient use of the spectrum.[35]

41. While current 900 MHz services may be used primarily for specialized business uses, there may be some MTA licensees who seek to provide ubiquitous wide-area service to the public for uses that we have not yet anticipated. Therefore, we believe that this coverage requirement is reasonable and attainable for 900 MHz MTA licensees while also serving as a suitable deterrent to competitors who may seek to obtain MTA licenses for anti-competitive warehousing rather than for service to the public. We also conclude that a showing of "substantial service" is appropriate for 900 MHz because several current offerings in this band are cutting-edge niche services. Moreover, it is more difficult for a 900 MHz MTA licensee who aggregates only a total of 5 MHz of spectrum, to provide the ubiquitous coverage that a 30 MHz broadband PCS licensees may contemplate.[36] Thus, we believe that 900 MHz MTA

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[31] RAM *Ex Parte* Presentation, filed Dec. 19, 1994, at 4.

[32] *Id.* at 2, 4.

[33] *See* 47 C.F.R. § 24.203(b).

[34] *See id.* § 24.103(c).

[35] *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, GEN Docket No. 90-314, 9 FCC Rcd 4957 (1994) at ¶ 157.

[36] Broadband PCS licensees in the 30 MHz band are required to provide coverage to 1/3 of the population of their service area within five years, and 2/3 of the population within 10

licensees should be held to a stricter coverage standard than is proposed by RAM and Geotek, but not as stringent as the 30 MHz broadband requirements.

42. Additionally, we noted in the *CMRS Third Report & Order* that any interim coverage requirements for MTA SMR systems must account for the fact that MTA licensees must provide co-channel protection to incumbent systems in their service area.[37] As discussed at ¶¶ 44-47, *infra*, 900 MHz MTA licensees will be required to protect incumbent SMR systems. We believe that when a licensee acquires an MTA license, it must assume the responsibility of obtaining the right to use sufficient spectrum to provide coverage if such spectrum is not already available. This responsibility may be achieved either directly (by utilizing available spectrum authorized to the MTA licensee or acquiring such spectrum through buyouts of incumbent licensees within its authorized MTA block) or indirectly (through resale or other leasing agreements with incumbents). Thus, an MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block. We believe that this will also serve to discourage applicants who have a limited ability to provide coverage within an MTA from seeking MTA licenses for anti-competitive reasons, *e.g.*, to block potential acquisition of the MTA license by an applicant who already provides substantial coverage in the MTA.

43. The imposition of interim coverage requirements also raises the issue of the consequences of the MTA licensee's failure to meet such requirements. We conclude that an MTA licensee's failure to meet the coverage requirements imposed at either the third or fifth years of its construction period, or to make a convincing showing of substantial service at the five-year mark, will result in forfeiture of the entire MTA license. This penalty for failure to comply with construction requirements is consistent with the penalties provided in our PCS rules.[38] Additionally, such action would allow the spectrum to be made available to other qualified applicants who could provide service to the public.

3. Treatment of Incumbents

44. In the *CMRS Third Report & Order*, the Commission concluded that incumbent SMR systems in the 900 MHz MTA blocks were entitled to co-channel protection by MTA licensees,[39] as well as adjacent channel interference protection, as discussed in ¶¶44-47, *infra*.[40] We determined that mandatory relocation of incumbents was not feasible in the 900

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years. 47 C.F.R. § 24.203(a).

[37] *CMRS Third Report & Order* at ¶ 180.

[38] *See* 47 C.F.R. §§ 24.103(h), 24.203(b).

[39] *CMRS Third Report & Order* at ¶ 145.

[40] *Id.* at ¶ 161.

MHz band because no alternative 900 MHz SMR channels were available for relocation, but stated that MTA licensees could negotiate mergers, buyouts, frequency swaps, or similar arrangements with incumbent systems on a voluntary basis.[41] We will therefore require MTA licensees to afford protection to incumbent SMR systems as provided by 47 C.F.R. § 90.621(b), either by locating their stations at least 113 km (70 mi) from the facilities of any incumbent, by complying with the co-channel separation standards set forth in our "short-spacing" rule if they seek to operate stations located less than 113 km (70 mi) from an incumbent licensee's facilities,[42] or by negotiating an even shorter distance with the incumbent licensee. This will adequately protect incumbent operations without hampering the ability of MTA licensees to construct stations throughout their authorized service area.

45. Additionally, the Commission stated in the *CMRS Third Report & Order* that while incumbent 900 MHz SMR systems are entitled to full co-channel interference protection for existing facilities, they would not be allowed to expand beyond existing service areas unless they obtain the MTA license for the relevant channels.[43] The *Order*, however, did not specifically define what the Commission considered to be an incumbent licensee's existing service area. RAM and Geotek assert that the Commission should define incumbent service areas in terms of fixed mileage distances.[44] They argue that an incumbent licensee's operating area should be determined by the mileage equivalent of each originally-licensed site's 22 dBu contour, which defines the station's undesired or interfering signal level. Similarly, AMTA states that a modification application to relocate a station should not be considered an initial application if it can be demonstrated that the proposed modification will not expand the station's 22 dBu contour.[45] Motorola supports AMTA's request that the Commission classify applications that do not alter the 22 dBu contour of an existing system as modification, rather than new, applications.[46] PCIA, however, requests that the Commission define existing service areas by the DFA boundary for systems that have been constructed within the DFA boundaries, and that transmitter site locations constructed within the DFA boundaries can be moved within the DFA so long as the new transmitter locations do not expand the coverage

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[41] *Id.* at ¶ 118.

[42] 47 C.F.R. § 90.621(b)(4). The distances in the table are calculated based upon the requirement that the 22 dBu signal strength contour of a proposed station does not fall within the 40 dBu signal strength contour of an existing station.

[43] *CMRS Third Report & Order* at ¶ 118.

[44] RAM/Geotek Joint *Ex Parte* Presentation at 3.

[45] *See* AMTA Petition for Reconsideration and Request for Clarification, filed Dec. 21, 1994, at 23.

[46] *See* Motorola Comments, filed Jan. 20, 1995, at 4.

area beyond the DFA boundaries.[47]

46. To provide incumbent 900 MHz SMR licensees with additional flexibility, we are defining the existing service area of an incumbent system by its originally-licensed 40 dBu signal strength contour. We are rejecting RAM and Geotek's suggestion that we adopt a fixed mileage separation based upon the 22 dBu signal strength contour because in the 900 MHz SMR service we have consistently defined the desired signal strength contour by the 40 dBu signal strength contour.[48] We decline to adopt the suggestion of AMTA and Motorola to utilize the 22 dBu signal strength contour for incumbent protected service areas, because we believe it would be difficult to expand the 22 dBu contour without also expanding the 40 dBu contour. We also reject PCIA's request that we define existing service areas by DFA boundaries. Adoption of a DFA service area definition would be inequitable, since it does not require an incumbent licensee to have provided coverage of its service area prior to receiving protection.

47. Our objective is to allow incumbents to continue existing operations without harmful interference and to give them flexibility to modify or augment their systems so long as they do not encroach on the MTA licensee's operations. Thus, incumbent licensees will be able to add new transmitters in their existing service area, without prior notification to the Commission, *e.g.*, to fill in "dead spots" in coverage or to reconfigure their systems to increase capacity within their service area, so long as their original 40 dBu signal strength contour is not expanded. Incumbent licensees will be required to notify the Commission of any changes in technical parameters or additional stations constructed, including agreements with an MTA licensee to expand beyond their signal strength contour, through a minor modification of their license. These minor modification applications will not be subject to public notice and petition to deny requirements or mutually exclusive applications.

4. Field Strength Limit at the MTA Boundary

48. In the *CMRS Third Report & Order*, we also concluded that co-channel interference criteria for adjacent MTA licensees would be similar to those imposed on the cellular and PCS services in that they would only apply to transmitting locations near the boundaries of each licensee's MTA.[49] With respect to the co-channel interference criteria between adjacent MTA licensees, RAM and Geotek support permitting a field strength limit at any location on the border of the MTA service area of 40 dBuV/m, unless all affected parties

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[47] *See* PCIA *Ex Parte* Presentation, filed Dec. 9, 1994, at 2; PCIA Petition for Reconsideration and Clarification, filed Dec. 21, 1994, at 14-15; PCIA Reply Comments, filed Jan. 30, 1995, at 5.

[48] *See e.g.*, Co-Channel Protection Criteria for Part 90, Subpart S Stations Operating above 800 MHz, *Report and Order*, PR Docket No. 93-60, 8 FCC Rcd 7293 (1993).

[49] *CMRS Third Report & Order* at ¶ 145.

agree to a higher level.[50] They also ask that MTA licensees be required to coordinate in good faith their frequency usage with co-channel adjacent MTA licensees, and, if applicable, other affected parties.

49. We agree that MTA licensees should not be permitted to exceed a signal level of 40 dBuV/m at their service area boundaries, unless all bordering MTA licensees agree to a higher field strength. We also adopt RAM and Geotek's proposal to require coordination of frequency usage between co-channel adjacent MTA licensees and all other affected parties. This approach provides MTA licensees a signal strength level sufficient to operate their systems up to the borders of their MTA licenses while also providing protection to adjacent operations. As an exception to this requirement, to the extent that a single entity obtains licenses for adjacent MTAs on the same channel block, it will not be required to coordinate its operations in this manner.

5. Secondary Sites

50. In discussing the treatment of 900 MHz SMR incumbent systems, the Commission determined in the *CMRS Third Report & Order* that incumbent systems are entitled to full co-channel interference protection for existing facilities, but are not allowed to expand beyond existing service areas unless they obtain the MTA license for the relevant channels.[51] We also noted that, in some instances, incumbent 900 MHz licensees had been granted authorizations to construct facilities outside of their DFAs on a secondary (*i.e.*, unprotected) basis to link their facilities in different markets. Although the Commission did not afford formal protection to these sites originally, they developed on an interference-free basis as a practical matter, due to the freeze on primary licensing outside the DFAs.[52] To prevent unnecessary disruption of existing operations, the Commission concluded that 900 MHz secondary sites licensed on or before August 9, 1994 would be afforded primary status, thus requiring the new MTA licensees to afford them full co-channel interference protection.[53]

51. On reconsideration, and in subsequent *ex parte* requests to the Commission, RAM and Geotek urge the Commission to extend protected status to all secondary sites for which applications were filed on or before August 9, 1994, even if they were not granted until after

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[50] RAM/Geotek Joint *Ex Parte* Presentation at Appendix A.

[51] *CMRS Third Report & Order* at ¶ 118.

[52] On November 4, 1986, the Commission opened a single filing window for applications inside the DFAs. *See* Public Notice of Nov. 4, 1986.

[53] *CMRS Third Report & Order* at ¶ 119.

August 9.[54] The American Mobile Telecommunications Association (AMTA) and the Personal Communications Industries Association also filed petitions for reconsideration, Motorola filed reply comments raising the same issue,[55] and both PCIA and AMTA have since submitted letters supporting the RAM/Geotek position.[56]

52. In support of their request, RAM and Geotek argue that many of these pre-August 10 applications had been pending at the Commission for several months when the *CMRS Third Report & Order* was adopted, and could have been granted on or before August 9 but for delays in Commission processing.[57] Geotek also argues that the Commission's recent decision to process the much larger backlog of pending 800 MHz SMR applications compels similar treatment of 900 MHz applications.[58] According to RAM, the equities lie with the incumbents who have built systems at 900 MHz and have taken tremendous risks to develop innovative systems and services.[59] In that same vein, AMTA points out that, during the suspension of expanded 900 MHz SMR licensing, many licensees assumed substantial business risk by applying for and constructing unprotected secondary sites to permit uninterrupted service coverage and to satisfy customer demand.[60] In the alternative, RAM and Geotek propose that the Commission's technical rules permit an incumbent to construct sites on a protected basis within the DFA areas to which they previously have been licensed.[61]

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[54] Geotek Petition for Reconsideration and Clarification, filed Dec. 21, 1994, at 3-10; RAM Petition for Reconsideration, filed Dec. 21, 1994, at 6-8; RAM *Ex parte* Presentation, filed Aug. 29, 1994 at 3; RAM *Ex parte* Presentation, filed Nov. 18, 1994, at 4; RAM *Ex parte* Presentation, filed Dec. 19, 1994 at 5-6; RAM/Geotek Joint *Ex parte* Presentation, filed Feb. 6, 1995, at 2.

[55] *See* AMTA Petition at 6-7; PCIA Petition at 13-14; PCIA/ NABER *ex parte* letter, filed Dec. 9, 1994, at 2; Motorola Comments at 2-3; PCIA Reply Comments at 5.

[56] *See* AMTA *Ex parte* letter, filed Dec. 8, 1994; PCIA/NABER *ex parte* letter.

[57] *See* RAM *Ex parte* Presentation, filed Aug. 29, 1994 at 1-2; RAM *Ex parte* Presentation, filed Oct. 26, 1994, at 1; RAM *Ex parte* Presentation, filed Nov. 18, 1994, at 4; RAM *Ex parte* Presentation, filed Dec. 19, 1994, at 6; RAM/Geotek Joint *Ex parte* Presentation at 2.

[58] Geotek Petition at 6.

[59] RAM *Ex parte* Presentation, filed Aug. 29, 1994, at 5; RAM *Ex parte* Presentation, filed Dec. 19, 1994, at 6.

[60] AMTA Petition at 5-7; AMTA *Ex parte* Letter, filed Dec. 8, 1994, at 2.

[61] RAM/Geotek Joint *Ex Parte* Presentation at 2.

53. While we do not agree that our 800 MHz decision compels granting of primary site protection, we are persuaded by petitioners' other arguments and grant their requests. First, granting primary site protection for additional sites will promote uninterrupted service to the public. Second, affected incumbents would acquire protection for only a *de minimis* amount of new spectrum.[62] Finally, our delays in processing secondary site applications in the 900 MHz SMR service appear to have produced an inequitable result for applicants who otherwise would have been entitled to protection under the *CMRS Third Report & Order*. Therefore, we require all MTA licensees to provide complete co-channel protection to all sites for which applications were filed on or before August 9, 1994. Secondary sites based on applications filed after August 9 will not be afforded such protection, however.[63] Information with respect to which secondary sites will be entitled to primary site protection will be available in the bidder's package for this service.

6. Loading Requirements

54. In the *CMRS Third Report & Order*, the Commission determined that loading requirements, which were adopted in the SMR services to protect against spectrum warehousing, are not necessary for MTA-based licensing of 900 MHz SMR, provided that licensees are subject to strict construction and coverage requirements.[64] However, the Commission retained the loading/automatic cancellation requirement for 900 MHz SMR incumbent licensees.[65] We distinguished 900 MHz service from 800 MHz service in this respect, noting that while 800 MHz SMR has matured to a point where continued application of loading requirements no longer served a public interest purpose, the 900 MHz SMR market is less mature both because initial licensing occurred more recently than at 800 MHz and because 900 MHz systems have hitherto operated in limited service areas.[66] We also noted that our then-existing 900 MHz SMR rules did not require licensees to achieve significant

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[62] There are a relatively small number of affected applications (approximately 300) that would increase the footprint of affected licensees.

[63] *See* Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, *Order on Reconsideration*,GN Docket No. 93-252, FCC 94-331, rel. Dec. 22, 1994, 10 FCC Rcd __ (1995) at ¶ 5, 60 Fed. Reg. 3773 (Jan. 19, 1995).

[64] *CMRS Third Report & Order* at ¶¶ 190-192.

[65] 47 C.F.R. § 90.631(i). Section 90.631(b) requires that each applicant for a trunked system certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant (with the exception of the two-year renewal provided in subsection (i)); otherwise authorizations cancel automatically.

[66] *CMRS Third Report & Order* at ¶ 194.

coverage of their designated service areas in order to retain their authorizations.[67]

55. On reconsideration, Geotek, RAM, AMTA, Motorola, and PCIA urge the Commission to eliminate loading requirements for all 900 MHz licensees, including incumbents.[68] Geotek argues that to do so would achieve regulatory parity among competing services, consistent with the goals of the Budget Act.[69] RAM argues that imposing loading requirements unfairly penalizes incumbents because of the Commission's unwillingness to give them the same ability to expand that has consistently been given to other systems.[70] AMTA argues that the 900 MHz service is, in fact, more mature than the 800 MHz service because the 800 MHz loading requirements only applied to systems that were licensed for new or additional channels after September 1989 and prior to June 1, 1993, while many 900 MHz systems were licensed and placed in operation in 1987.[71] AMTA also asserts that because the Commission's rules precluded 900 MHz SMR operators from providing significant coverage outside the DFAs, the Commission cannot rely on the licensees' failure to provide wider coverage as justification for retaining the loading requirements.[72] PCIA and Motorola argue that legitimate licensees in the band who have invested seven years of capital and labor in the business should not be forced to relinquish channels because they were not fully permitted to provide the service for which the allocation was designed.[73] These petitioners also contend that the requirement places 900 MHz licensees on an uneven playing field with other CMRS licensees.[74]

56. Assuming that we elect to retain loading requirements for incumbents, RAM has requested a temporary stay of these requirements as they apply to RAM pending the outcome of the 900 MHz auction.[75] RAM states that the nature of its nationwide data system makes it difficult to apply loading criteria to particular stations or channels, and that application of loading criteria between now and the 900 MHz auction could therefore cause it to lose some

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[67] *Id.*

[68] Geotek Petition at 12; RAM Petition at 8-10; AMTA Petition at 10-14; PCIA Petition at 6-7; Motorola Comments at 3; PCIA Reply Comments at 3.

[69] Geotek Petition at 12.

[70] RAM Petition at 10.

[71] AMTA Petition at 12.

[72] *Id.* at 13.

[73] PCIA Petition at 7; Motorola Comments at 3.

[74] PCIA Petition at 6; PCIA Reply Comments at 3; Motorola Comments at 3.

[75] *See* RAM Request for Stay, filed Nov. 16, 1994.

of its existing authorizations. RAM also states that it intends to participate fully in the 900 MHz auction to obtain MTA licenses for the channel blocks that it currently uses, which would eliminate loading requirements for RAM where it is the successful bidder. RAM therefore requests that we stay the loading requirements as they apply to its existing authorizations until 30 days after the MTA license for each 10-channel block issued. If RAM is the successful bidder, the loading issue would be mooted; if it is not the successful bidder, it would be required to comply with loading requirements for its existing authorizations in the block. In support of its request, RAM contends its system has unique characteristics that make it unnecessary to mechanically apply the current loading requirements. RAM points out that it has already constructed a wide area network of more than 900 sites that covers more than 64% of the nation's population, and 25% of the population in all but two of the continental United States MTAs and Hawaii. This amount of coverage, RAM notes, compares favorably with coverage requirements for broadband PCS licensees.[76]

57. While we recognize the concerns of the petitioners, we affirm our decision in the *CMRS Third Report & Order* that the loading requirements for incumbent 900 MHz SMR licensees should be retained. Our decision is based on the unique history and nature of the 900 MHz service as it has developed to date. As we pointed out in the *CMRS Third Report & Order*, the 900 MHz service is not a mature service, both because it was licensed more recently than 800 MHz and because Phase I licensing has been confined to limited service areas. Based on these factors, we have already granted special relief to 900 MHz licensees by providing them with an additional two years to load their systems on top of the five years originally granted.[77] Having granted this relief, we believe that eliminating loading requirements at this point for incumbent licensees who have failed to fully load their systems would not be in the public interest. Even if it is true, as petitioners contend, that incumbents have been unable to load their systems because they are limited to operating in DFAs, they now have the ability to overcome this obstacle by obtaining an MTA license, which exempts them from all previously applicable loading requirements. We see no reason, however, why an incumbent who does not obtain an MTA license should be entitled to retain spectrum that it has been unable to load for seven years. Moreover, these requirements will prevent the warehousing of spectrum. Once the Commission takes back channels from an incumbent licensee who has not met loading requirements, the spectrum covered by the incumbent's authorization will automatically revert to the MTA licensee who has obtained the contingent rights to that spectrum.[78]

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[76] Under our broadband PCS rules, 10 MHz PCS BTA licensees have a 25% coverage requirement. 47 C.F.R. § 24.203(b). Also, 30 MHz MTA licensees must cover one-third of their population within five years. *Id.* § 24.203(a).

[77] Amendment of Section 90.631 of the Commission's Rules and Regulations Concerning Loading Requirements for 900 MHz Trunked SMR Stations, *Report and Order*, PR Docket No. 92-17, 7 FCC Rcd 4914 (1992).

[78] *See, e.g., 800 MHz Further Notice* at ¶ 31.

58. While we are retaining the loading requirements for 900 MHz incumbents generally, we will grant RAM's request for temporary relief from loading requirements until the conclusion of the auction. Because RAM's request would allow it to retain certain authorizations without making a loading showing at this point, we find RAM's request more analogous to a waiver request than a request for stay. Before a request for waiver will be granted, the petitioner must clearly demonstrate that the general rule is not in the public interest when applied to its particular case, and that the grant of the waiver will not undermine the public policy served by the rule.[79] We find that RAM has presented unique circumstances that warrant granting of a waiver.

59. First, RAM is one of the few 900 MHz incumbents that actually has constructed a wide-area network. Because of the unusual size and complexity of the network, we have previously granted RAM an extension of the construction period for its system and have allowed it four years to load each system to the required level.[80] RAM has used this authority in a timely manner to construct a substantial wide area network of more than 900 sites that covers more than 64% of the nation's population, and 25% of the population in all but two of the continental United States MTAs and Hawaii. Second, we agree with RAM that the nature of its nationwide data system makes it difficult to apply loading criteria to particular stations or channels, and that the application of such criteria could be disruptive to its existing network. Finally, we note that RAM intends to participate fully in the auction, and that it is willing to submit to loading requirements to the extent that it does not obtain MTA licenses for the areas in which it operates. Based on these factors, we will waive the application of the loading rules to RAM's system until 30 days after the completion of the auction. At that point, RAM will be required to demonstrate loading for any authorization (1) for which a showing would otherwise have been required prior to the auction, and (2) that is not within the area of an MTA license obtained by RAM.

7. Emission Masks

60. The Commission generally subjects mobile radio services to emission mask rules that restrict transmitter emissions on the spectrum adjacent to the licensee's adjacent channel. In the *CMRS Third Report & Order*, we affirmed that our out-of-band emission rules should apply only where emissions have the potential to affect other licensees' operations.[81]

61. Thus, we will only apply emission mask rules to "outer" MTA channels in each block (*i.e.*, the channels on the outer edges of an MTA licensee's channel block) and to "interior" MTA channels (*i.e.*, the channels inside of the MTA licensee's channel block

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[79] *AT&T Co.*, 94 FCC 2d 545, 548 (1983); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[80] *American Mobile Data Communications, Inc.*, 4 FCC Rcd 3802 (1989).

[81] *CMRS Third Report & Order* at ¶ 161.

assignment that are adjacent to other licensees) where there are incumbent SMR licensees who will be affected by the MTA licensee's operations. We believe that these channels alone have the potential to affect operations outside of the MTA licensee's authorized bandwidth. Moreover, this approach is consistent with our action in the broadband PCS context. Specifically, for wide-area licensees in the 900 MHz SMR band on any frequency outside the MTA licensee's frequency block, the peak power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$(P) decibels or 80 decibels, whichever is the lesser attenuation. We conclude that this emission mask will adequately protect other MTA licensees. We note, however, that MTA licensees will also be required to provide adjacent channel protection to "interior" channels used by incumbent licensees, as we decided in the *CMRS Third Report & Order*.[82] As an exception to this requirement, if a single entity aggregates adjacent channel blocks, it will not be required to mask its emissions at the band edge of each ten channel block.

8. Mexican/Canadian Border Areas

62. In the Mexican and Canadian border areas, 900 MHz SMR channel availability is restricted by treaty and limitations on ERP and antenna height have been placed on additional channels.[83] As a result, some 900 MHz channels may not be available to MTA licensees operating in border areas or may suffer from significant restrictions on ERP or antenna height, making them less attractive for MTA licensees.

63. We will, however, use the same allocation of MTA channel blocks in border areas as in non-border areas. Thus, use of channels in MTAs that encompass border areas will be subject to the relevant rules regarding international assignments and coordination of such channels. This permits applicants to assess the impact of the border requirements in their valuation of those blocks for competitive bidding purposes.

9. Discontinuance of Operation

64. In the *Phase II First Report & Order*, the Commission revised Section 90.631(f), which provides that SMR licenses cancel automatically if a licensee discontinues station operations for more than 60 consecutive days, unless the Commission authorizes additional time for station operations to remain discontinued. Under the rule, if the Commission does not authorize additional time, the subject license cancels automatically unless the station resumes operations within five days after the licensee receives the Commission's letter declining to authorize additional time.[84] Shortly thereafter, the Commission stayed the

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[82] *Id.*

[83] *See* 47 C.F.R. §§ 90.619(b)(2), (d).

[84] 47 C.F.R. § 90.631(f).